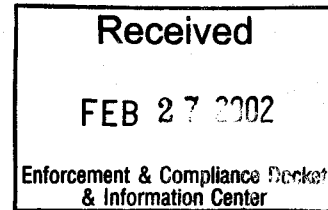


EC-2000-007
1V-D-075



February 28, 2002

United States Environmental Protection Agency
Enforcement and Compliance Docket and Information Center
Mail Code 2201A
Attn: Docket #EC-2000-007
1200 Pennsylvania Avenue, NW
Washington, DC 20460

SUBJECT: New Hampshire Comments on Proposed EPA Cross-Media Electronic Reporting and Records Rule (CROMERRR); Docket #EC-2000-007

Dear Sir / Madam:

Thank you for the opportunity to review and comment on the proposed Cross-Media Electronic Reporting and Record-keeping Rule (CROMERRR). The New Hampshire Department of Environmental Services (NH DES) appreciates EPA's efforts to provide consistent standards to the States in the form of this important rule.

The State of New Hampshire has recently enacted the Uniform Electronic Transactions Act (UETA) and will soon begin work on administrative rules for state agency procedures regarding electronic transactions. DES in particular has established electronic reporting as a high priority objective and we have been working to investigate both procedural and technology options for enabling reporting both to and from the department. We will be making significant additional investments of time and resources in designing and implementing the systems necessary to support secure transactions, and want to be able to comply with national standards without significant adverse impacts on our efforts here in New Hampshire.

The bulk of our comments on CROMERRR relate to specific sections of the rule and are contained in the attached document, "Specific CROMERRR Comments: New Hampshire Department of Environmental Services". We commend EPA for the effort involved in drafting a proposed standard to facilitate moving to electronic reporting with electronic signatures, and we commend them for the inclusion of state and other interests in the development process. However, we are concerned that the proposed rule as written - because of ambiguities and certain requirements that would be very costly to meet - would serve more to discourage than to facilitate electronic reporting of environmental information.

You will receive comments suggesting that the proposed rule be separated into two parts, one for electronic reporting and one for record-keeping, so that the electronic reporting part can move ahead while the record-keeping part is delayed for further review. There are strong concerns with the feasibility of the record-keeping requirements and the costs associated with meeting them. While we understand and share these concerns, it is our position that the rule needs to address reporting and record-keeping provisions in tandem and should not be implemented until the whole package is acceptable. Bifurcation of the rule - and implementation of just the electronic reporting provisions - could result in States moving ahead with their own approaches to record-keeping that could be found to be unacceptable once that part of the rule is finalized and adopted. This would put the States in the position of having to choose between going ahead with considerable risks or waiting to do anything until both parts of the rule are implemented.

Thank you for the opportunity to submit our comments on the proposed CROMERRR. We look forward to any opportunity to participate in further discussions regarding these or other state comments on proposed rule language. If you have any questions, or need further clarification regarding any of the information in this letter or in our attached comments, please contact Frank Catanese at 603-271-7011 (email fcatanese@des.state.nh.us).

Sincerely,

George Dana Bisbee
Assistant Commissioner

Attachment

Specific CROMERRR Comments
New Hampshire Department of Environmental Services

Sec 3.1: We are concerned about the possible interpretations of the electronic record-keeping requirements of this section. If we use electronic devices or paper to collect data and then transfer that data into tables, then the language here could be interpreted to apply these stringent record-keeping requirements to this original data collection record. Compliance with this interpretation would be both very technically difficult and expensive.

Sections 3.100 and 3.2000(a)1,3

many of these records will be connected to the Internet. We have analyzed the issue of intrusion detection and we have to date chosen to not acquire the necessary staff and software necessary to operate it due to the high cost. Even if we were to implement an intrusion detection system, any such system has limitations. As we have seen in military and financial institutions, having intrusion detection, even a very good system, does not guarantee that records storage will always meet the criteria presented in this section. We feel that the proposed intrusion detection requirements could be costly to the States and are not cost-justified based on the potential threat.

Section 3.100(a)5: We are concerned about the changes in technology over time and how those changes would impact the ability for someone to detach or copy a signature from a signed document. We would recommend a change from using "Prevent" to "Minimize the possibilities for".

Section 3.2000(d)5: Periodic renewal of signatures within industry standards for renewal is difficult since industry standards have not yet been determined. We do feel, however, that the intent here is good and we would support this approach as long as what is expected of the States in order to be in compliance is clear.

Section 3.2000(e)1: The ability to review content prior to affixing signature is appropriate at some times but not at others. In the event that a facility is submitting a document, they will most likely have their signature affixed prior to sending. With electronic submissions of most data, this will be the case. The people affixing the signature have total control over what they sign. They should be required to shoulder this burden. In instances where we provide an on-screen form where the submitter is providing data followed by a signature, then DES should follow this procedure.

Section 3.2000(f)1: We feel that the precise routing of a document is not necessary to keep when a document is being submitted. The volume of this routing information can be considerable and maintaining it can add cost without adding value. As long as the receiving party can demonstrate that a document was in fact sent by the party the document is attributed to, that the document was received, that appropriate measures have been taken to verify that the document received was the same as the document sent, and that the receiving party can protect the integrity of the document, then it should not be necessary to add the burden of maintaining

routing information.

Section 3.2000(g)1ii: Maintaining or attempting to maintain forms utilized today for a period of time of up to 25 to 50 years is not realistic. A different solution must be found here.

Other Comments:

It is our feeling that self-certification - or at most a single certification by EPA, as opposed to the program-by-program approach described in the rule - is appropriate to ensure compliance with the rule. EPA has expended considerable effort to make sure that the rule is comprehensive. It will be in the best interests of all of the agencies to see to it that they meet the requirements set forth in CROMERR. Failure to do so will become apparent if challenged. Self-certification would also eliminate any need for recertification once systems are modified.

EPA should do everything that it can to keep the costs to States for participating to a minimum. The idea of funding intrusion detection at this time seems prohibitive. It is possible that the State of New Hampshire will centralize this function at some point in time and make it easier for us to participate in the future, but presently this particular requirement would be a significant deterrent for us. Our research indicates that implementation of intrusion detection systems takes, at a minimum, ½ FTE to operate this type of software effectively. That, coupled with the expense to purchase and maintain the software, will make this endeavor less attractive.

It is also very important that electronic reporting and record-keeping requirements remain technology neutral. Certain parts of the rule could be interpreted to favor a particular type of technology. These technologies will change over time and we will have to have rules that always permit us to use the best tools available to meet our objectives.